

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Adam D. Weiner,

Plaintiff,

VS.

Xcel Energy Inc.,

Defendant.

Civil Case No.:

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT AND JURY DEMAND

1. Plaintiff Adam D. Weiner alleges violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (“TCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 27 U.S.C. § 227. *See also Mims v. Arrow Fin. Servs. LLC*, 132 S. Ct. 740 (U.S. 2012). Venue in this Judicial District is proper under 28 U.S.C. § 1391(b)(2) because Plaintiff Adam D. Weiner resides here, Defendant Xcel Energy Inc. placed the telephone calls into this Judicial District, and Defendant Xcel Energy Inc. transacts business in this Judicial District.

PARTIES

3. Plaintiff Adam D. Weiner (hereinafter “Plaintiff”) is a natural person, and citizen of the State of Minnesota, residing in Hennepin County, Minnesota.

4. Defendant Xcel Energy Inc. (hereinafter “Defendant”) is a Minnesota corporation with its principal place of business located at 414 Nicollet Mall, Suite 500, Minneapolis, Minnesota 55401. Corporation Service Company is the registered agent authorized to accept service on behalf of Defendant at 2345 Rice Street, Suite 230, Roseville, MN 55113.

FACTUAL ALLEGATIONS

5. On or about February 2015, Defendant began communicating with Plaintiff by placing numerous telephone calls to Plaintiff’s cellular telephone using an automated telephone dialing system (“ATDS”) and/or artificial voice or pre-recorded voice (collectively the “Telephone Calls”).

6. Defendant placed the Telephone calls to Plaintiff’s cellular telephone from various “800” numbers including but not limited to, “1-888-335-7976” (hereinafter the “7976 Number”).

7. Defendant has continued to place the Telephone Calls to Plaintiff’s cellular telephone through the date of this Complaint.

8. During some or all of the Telephone Calls, Defendant left Voicemail Messages on Plaintiff’s cellular telephone using an artificial and/or prerecorded voice (collectively the “Voicemail Messages”).

9. For example, on October 14, 2015, Defendant left the following Voicemail Message on Plaintiff’s cellular telephone from the 7976 Number:

This is an important message from Xcel Energy for Adam D. Weiner. Please call us at 1-888-335-7976 by 9:00 p.m. central standard time today. Thank you.

10. Defendant left several similar or identical Voicemail Messages on Plaintiff's cellular telephone. Every Voicemail Message from the 7976 Number:
 - a. used an artificial voice and/or prerecorded voice;
 - b. began with a two or three second delay; and
 - c. stated Plaintiff's name in an artificial voice and/or prerecorded voice that was different from the artificial voice and/or prerecorded voice in the remaining body of the message.
11. Many of the Voicemail Messages began by partially cutting off a separate artificial and/or prerecorded message before conveying the intended and/or actual Voicemail Message for Plaintiff.
12. For example, one Voicemail Message from the 7976 Number began by cutting off a previous artificial and/or prerecorded message that stated **". . . if you are not avail . . ."** After a two or three second pause, Defendant left the identical Voicemail Message identified in paragraph nine (9).
13. Defendant left several similar or identical Voicemail Messages on Plaintiff's cellular telephone from other "800" numbers as well.
14. The content of every Voicemail Message was spoken, in part by a computer or machine. The content of every Voicemail Message was spoken with an artificial voice and/or prerecorded voice.

15. Every Voicemail Message stated Plaintiff's name in an artificial voice and/or prerecorded voice that was different from the artificial voice and/or prerecorded voice in the remaining body of the message.

16. Many of the Voicemail Messages began with a clicking or beeping noise.

17. None of the Telephone Calls and/or Voicemail Messages placed by Defendant to Plaintiff's cellular telephone were for "emergency purposes" as specified in 47 U.S.C. § 227(b)(1)(A).

18. Defendant willfully or knowingly violated the TCPA.

COUNT I:
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

19. Plaintiff restates and re-alleges the preceding paragraphs of this Complaint.

20. Defendant, or others acting at its request, placed non-emergency telephone calls to Plaintiff's cellular telephone using an ATDS or prerecorded voice or artificial voice in violation of 47 U.S.C. § 227 (b)(1)(A)(iii).

21. Under 47 U.S.C. § 227(b)(3)(B), Plaintiff is entitled to statutory damages of at least \$500.00 per violation.

22. Additionally, under 47 U.S.C. § 227(b)(3)(C), Plaintiff is entitled to \$1,500.00 for every time Defendant willfully or knowingly violated the TCPA.

23. As a result of Defendant's willful violations of the TCPA, Plaintiff has sustained damages to be determined at trial.

JURY DEMAND

24. Plaintiff demands trial by jury.

WHEREFORE, Plaintiff Adam D. Weiner demands a trial by jury and prays for judgment against Defendant Xcel Energy Inc. as follows:

1. Awarding judgment against Defendant Xcel Energy Inc. in an amount to be determined at trial;
2. Awarding Plaintiff any costs, litigation expenses, disbursements, and allowable attorneys' fees; and
3. Declaring that all of the Telephone Calls and Voicemail Messages violate the TCPA;
4. Granting a permanent injunction prohibiting Defendant from placing non-emergency calls to Plaintiff's cellular telephone using an ATDS or pre-recorded or artificial voice; and
5. Awarding Plaintiff such other and further relief as the Court deems proper, just and equitable.

TARSHISH CODY, PLC

Dated: January 25, 2016

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